

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-336-C - ORDER NO. 2011-_____
DECEMBER 6, 2011

IN RE: Application of Common Point, LLC for a)	ORDER GRANTING
Certificate of Public Convenience and)	CERTIFICATE AND
Necessity to Provide Local Exchange and)	APPROVING FLEXIBLE
Interexchange Services, for Flexible)	REGULATION AND
Regulation first established by Order No. 98-)	ALTERNATIVE
165 in Docket No. 97-467-C; and for)	REGULATION
alternative regulation first established by)	
Order Nos. 95-1734 and 96-55 in Docket No.)	
95-661-C)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Common Point, LLC (“Common Point” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange (including exchange access) and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2010) and the rules and regulations of the Commission. By its Application, Common Point also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed Common Point to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state

affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Common Point and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Common Point complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, Common Point and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

Subsequently, Common Point and ORS filed a Settlement Agreement attached hereto as Order Exhibit 2. A hearing was convened on November 14, 2011, at 10:00 am in the offices of the Commission in Columbia, South Carolina, before Randall Dong, Hearing Examiner. Common Point was represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff (“ORS”) was represented by Nanette Edwards, Esquire. The South Carolina Telephone Coalition did not appear at the hearing.

Joseph O’Hara, Chief Financial Officer for the Company, testified in support of the Company’s Application. The record reveals that Common Point is a Limited Liability Company (“LLC”) organized under the laws of the State of Illinois and that it is registered to transact business in South Carolina as a foreign LLC. According to Mr. O’Hara, the Company seeks authority as a facilities-based provider and reseller of local services (including exchange access) and interexchange services. Mr. O’Hara explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. Common Point will initially provide switched tandem access services to other carriers delivering call traffic into and out of

local exchanges through neutral, common or tandem switches. Mr. O'Hara also discussed Common Point's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. O'Hara offered that Common Point possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company's Application and Mr. O'Hara's testimony both evidence that Common Point's management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. O'Hara also testified that Common Point will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. O'Hara offered that approval of Common Point's Application would serve the public interest.

Mr. O'Hara, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in Illinois. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). Common Point maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP").

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Common Point is organized as an LLC under the laws of the State of Illinois, and is authorized to do business as an LLC in South Carolina by the Secretary of State.

2. Common Point desires to operate as a provider of facilities- and resold local exchange based (including exchange access) and interexchange services in South Carolina.

3. We find that Common Point possesses the managerial experience and capability to operate as a provider, on a facilities-basis and through resale, of local exchange services and interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that Common Point possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to Common Point to operate on a facilities basis and as a reseller of local exchange telecommunications and interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

6. Common Point requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Common Point's requested waiver reasonable and understands the potential difficulty presented to Common Point should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest.

We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2006).

8. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B) (3) (Supp. 2010).

9. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B) (4) (Supp. 2010).

10. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2010).

11. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2010).

12. Following execution of a Stipulation with intervenor South Carolina Telephone Coalition ("SCTC"), the SCTC withdrew its opposition to the Application.

CONCLUSIONS OF LAW

1. The Commission concludes that Common Point possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that Common Point will participate in the support of universally available telephone service at affordable rates to the extent that Common Point may be required to do so by the Commission.

3. The Commission concludes that Common Point will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Common Point's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Common Point will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange (including exchange access) and interexchange telecommunications services as requested by Common Point and as set forth in its Application and Mr. O'Hara's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Common Point to provide resold intrastate local exchange

telecommunications services (including exchange access) and intrastate interexchange telecommunications services.

8. The Commission adopts a rate design for Common Point for its residential interexchange services, if any, which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Common Point shall not adjust its residential interexchange rates for end-users, if any, below the approved maximum level without notice to the Commission and to the public. Common Point shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2010).

10. The Commission concludes that Common Point's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing.

If an investigation of a particular tariff filing is instituted within seven days of the filing date, the tariff filing will then be suspended until further Order of the Commission.

If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within seven days of the filing date.

11. The Commission concludes the Company's retail local exchange telecommunications services (if any) shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing. An investigation of the tariff filing may be instituted within 30 days of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within thirty days of the filing date. Further, any such tariff filings will be subject to the same monitoring process as similarly situated local exchange carriers.

12. We conclude that Common Point's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted. The waiver is not contrary to the public interest. We also grant exemption from the policies requiring the use of USOA.

13. The Stipulation and Settlement Agreement between the various parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Common Point to provide intrastate interexchange services as a facilities-based carrier and through the resale of services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide facilities-based and resold local exchange telecommunications services within the State of South Carolina. Prior to offering retail local exchange services, Common Point shall comply with or seek a waiver of S.C. Code Ann. Regs. 103-607 (Supp. 2010).

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so, Common Point shall file its revised tariff utilizing the Commission's e-filing system for tariffs within 30 days of the issuance of this Order. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the Common Point-ORS Settlement Agreement.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. Common Point shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Common Point changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, Common Point shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 C.F.R. § 51.209). Specifically, Common Point shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. Common Point shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Common Point shall keep financial records on an intrastate basis for South

Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **July 1st** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Common Point shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, Common Point requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2010), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The Commission finds Common Point’s requested waiver reasonable and understands the potential difficulty presented to Common Point should the waiver not be granted. The Commission therefore grants the requested waiver. However, Common Point shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and Common Point shall promptly notify the Commission and ORS if the location of its books and records changes.

12. Common Point also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Common Point maintains its book of accounts in accordance with

Generally Accepted Accounting Principles. GAAP is used extensively by interexchange carriers and other competitive telecommunications carriers. Accordingly, Common Point requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

13. In the event that Common Point offers or provides any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated, Common Point is required to comply with that Title and Chapter, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911" system or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, in the event Common Point offers or provides the appropriate services, the Commission hereby instructs Common Point to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memorandum from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memorandum provides information about contacting County 911 Coordinators. By this Order and prior to providing local telephone services in South Carolina, Common Point shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

14. The Stipulation and Settlement Agreement between the various parties are hereby approved and are made a part of this Order.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David A. Wright, Vice Chairman

(SEAL)